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**UNITED STATES DISTRICT COURT****EASTERN DISTRICT OF TEXAS**

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VERNON J. BOYETT,

Plaintiff,

*versus*C. CARTER, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:18-CV-282

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Vernon J. Boyett, a prisoner previously confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against C. Carter, David Turrubiate, Jr., Dr. Mark Barber, and an unidentified correctional officer.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

Plaintiff contends that his Eighth Amendment right to be free from cruel and unusual punishment was violated when was deprived of eating utensils and toilet paper for 26 hours after

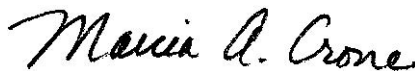
he was moved to a cell in the segregation building. To successfully plead a cause of action in a civil rights case, a plaintiff must allege facts that illustrate the defendant participated in the alleged wrong. *Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir. 1986). Plaintiff does not allege that any of the named defendants were responsible for depriving him of eating utensils and toilet paper. Therefore, the Eighth Amendment claim should be dismissed as frivolous and for failure to state a claim upon which relief may be granted.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

#### ORDER

Accordingly, plaintiff's objections (#33) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#31) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 1st day of December, 2020.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE